

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index No.: _____/19

JOHN DOE,

Plaintiffs designate
ERIE COUNTY
as place of trial.

Plaintiff,

-against -

The basis of venue is
Defendant's principal
place of business.DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI
HIGH SCHOOL, ST. ANTHONY OF PADUA
PROVINCE OF THE ORDER OF FRIARS MINOR
CONVENTUAL, OUR LADY OF THE ANGELS
PROVINCE and JAMES SMYKA,Plaintiff's residence
address is
Erie CountySUMMONS

Defendants.

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case your failure to appear or answer, judgement will be taken for the relief demanded herein.

A COPY OF THIS SUMMONS WAS FILED WITH THE CLERK OF THE COURT, ERIE COUNTY ON _____ IN COMPLIANCE WITH CPLR §§305(a) AND 306(a).

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC

By: Jordan K. Merson
Attorneys for Plaintiff
150 East 58th Street 34th Floor
New York, New York 10155
(212) 603-9100

TO:

DIOCESE OF BUFFALO

795 Main Street
Buffalo, NY 14203

ST. FRANCIS OF ASSISI HIGH SCHOOL

410 Lake Shore Road
Hamburg, NY 14075

**ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF THE FRIARS MINOR
CONVENTUAL**

123000 Folly Quarter Road
Ellicott, MD 21042

OUR LADY OF ANGELS PROVINCE

12300 Folly Quarter Road
Ellicott, MD 21402

JAMES SMYKA

75 St. Francis Place
Rensselaer, NY 12144

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

Index No.: _____/19

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JOHN DOE,**Plaintiff,****-against -****VERIFIED
COMPLAINT****DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI
HIGH SCHOOL, ST. ANTHONY OF PADUA
PROVINCE OF THE ORDER OF FRIARS MINOR
CONVENTUAL, OUR LADY OF THE ANGELS
PROVINCE and JAMES SMYKA,****Defendants.**

-----X

Plaintiff¹, above named, complaining of the defendants, by **MERSON LAW,****PLLC., respectfully allege(s):****NATURE OF THE CLAIM**

1. This is a case of plaintiff John Doe who was sexually abused as a child by Father James Smyka ("Smyka"), Father Aurelian Brzezniak ("Brzezniak") Father Patrick Mendola ("Mendola") and other priests at and of St. Francis of Assisi High School ("St. Francis"), Diocese of Buffalo ("Diocese"), St. Anthony of Padua Province of the Order of Friars Minor Conventual ("Order") and Our Lady of the Angels Province ("Our Lady of the Angels").
2. Smyka, Brezeniak and Mendola were agents, servants and/or employees of St. Francis which operated under the exclusive control of the Diocese, Order and Our Lady of the Angels. Smyka, Brezeniak and Mendola were known among the community and the children as sexual predators.

¹ Plaintiff uses a pseudonym because she is a victim of a sex crime pursuant to N.Y. Civ. Rights § 50-b and other statutory and common law principles.

3. Despite the Diocese, St. Francis, Order and/or Our Lady of the Angels knowledge that Smyka, Brzezniak and Mendola sexually abused children and/or had the propensity to sexually abuse children, the Diocese, St. Francis, Order and/or Our Lady of the Angels allowed Smyka, Brzezniak and Mendola unfettered access to children, including on Diocese, Order and/or Our Lady of the Angels premises, without supervision.
4. In approximately 1977, Smyka, Brzezniak and Mendola, while under the scope of employment with the Diocese, St. Francis, Order and/or Our Lady of the Angels and while acting on behalf of the Diocese, St. Francis, Order and/or Our Lady of the Angels, sexually abused Plaintiff, then approximately seven years old, weekly by repeatedly forcing plaintiff to touch his own penis, their penises and engage in oral sex at least fifteen times in one night and otherwise sexually abused him.
5. Plaintiff brings this lawsuit to recover for the emotional and physical suffering he endured because of the negligence of the Diocese of Buffalo, St. Francis of Assisi High School, St. Anthony of Padua Province of the Order of the Friars Minor Conventual and Our Lady of the Angels Province and to make sure no other child is forced to suffer the abuse and physical and mental trauma he felt and continues to feel.
6. Plaintiff additionally brings this lawsuit to recover for the emotional and physical suffering he endured because of the malicious and intentional acts of James Smyka and to make sure no other child is forced to suffer the abuse and physical and mental trauma he felt and continues to feel.

PARTIES

7. At all times herein mentioned defendant **DIOCESE OF BUFFALO** was a not for profit corporation incorporated in the state of New York and by virtue of the laws of the State of New York.

8. At all times herein mentioned, defendant **DIOCESE OF BUFFALO** was located at 795 Main Street, Buffalo, New York 14203.
9. At all times herein mentioned, Smyka, Brzezniak and Mendola were agents, servants and/or employees operating under the direction and control of defendant **DIOCESE OF BUFFALO**, and its agents, servants and/or employees.
10. At all times herein mentioned **ST. FRANCIS OF ASSISI HIGH SCHOOL** was a school in the state of New York and by virtue of the laws of the State of New York.
11. At all times herein mentioned, defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** was located at 4129 Lake Shore Road, Hamburg, New York 14075.
12. At all times herein mentioned, Smyka, Brzezniak and Mendola were agents, servants and/or employees operating under the direction and control of defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL**, and its agents, servants and/or employees.
13. At all times herein mentioned defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** was a not for profit corporation incorporated in the state Maryland and by virtue of the laws of the State of Maryland.
14. At all times herein mentioned, defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** was located at 12300 Folly Quarter Road, Ellicott, Maryland, 21042.
15. At all times herein mentioned, Smyka, Brzezniak and Mendola were agents, servants and/or employees operating under the direction and control of defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**, and its agents, servants and/or employees.

16. At all times herein mentioned defendant **OUR LADY OF THE ANGELS PROVINCE** was a not for profit corporation incorporated in the state Maryland and by virtue of the laws of the State of Maryland.
17. At all times herein mentioned, defendant **OUR LADY OF THE ANGELS PROVINCE** was located at 12300 Folly Quarter Road, Ellicott, Maryland, 21042.
18. At all times herein mentioned, Smyka, Brzezniak and Mendola were agents, servants and/or employees operating under the direction and control of defendant **OUR LADY OF THE ANGELS PROVINCE**, and its agents, servants and/or employees.
19. At all times herein mentioned, defendants **DIOCESE OF BUFFALO** and **ST. FRANCIS OF ASSISI HIGH SCHOOL, ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**, and **OUR LADY OF THE ANGELS PROVINCE** were agents, servants, employees and/or alter egos of each other.

FACTS OF THE CASE

20. Defendants **DIOCESE OF BUFFALO, ST. FRANCIS OF ASSSI HIGH SCHOOL, ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**, and/or **OUR LADY OF THE ANGELS PROVINCE**'s negligence and recklessness caused Smyka, Brzezniak and Mendola to have access to children, including on Diocese, St. Francis, Order and/or Our Lady of the Angels Province property, without supervision despite their knowledge that Smyka, Brzezniak and Mendola sexually abused children and/or had the propensity to sexually abuse children and therefore are responsible for the injuries that Plaintiff incurred because but for Defendants **DIOCESE OF BUFFALO, ST. FRANCIS OF ASSSI HIGH SCHOOL,**

ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL, and/or **OUR LADY OF THE ANGELS PROVINCE**'s negligence, Plaintiff would not have suffered the mental and physical anguish inflicted by Smyka, Brzezniak and Mendola. Defendants' gross negligence, reckless, wanton, and/or willful conduct supports punitive liability.

21. Smyka, Brzezniak and Mendola sexually assaulted Plaintiff and many other children at St. Francis. Nonetheless, defendants **DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI HIGH SCHOOL, ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**, and/or **OUR LADY OF THE ANGELS PROVINCE** failed to remove Smyka, Brzezniak and/or Mendola from their positions or to take any steps to keep the dangerous predator away from children. In fact, the Diocese, St. Francis, Order and/or Our Lady of the Angels Province continued to allow, encourage and/or permit Smyka, Brzezniak and Mendola to have unfettered access to children, including on Diocese, Order, St. Francis and Our Lady of the Angel premises.
22. In or about August of 1977, plaintiff's family was on vacation and transported Plaintiff's Uncle to St. Francis where he was assigned to teach. Plaintiff and his family were housed at St. Francis for the night, but Plaintiff's parents were put on a different part of the building and told that they were not permitted to go where their children were being housed.
23. Throughout the night, Smyka, Brzezniak and Mendola would go into the room plaintiff shared with his younger brother, take him to a shower room and sexually abuse him.
24. Each time plaintiff was taken out of his room and brought to the shower room, there were more priests in the room to watch him be sexually abused. By the end of the night,

there were approximately 15 to 20 priests in the room watching and laughing as Smyka, Brzezniak and Mendola and other priests sexually abused him.

25. Smyka, Brzez, Mendola and other priests forced plaintiff, then approximately eight years old, to masturbate, manually stimulate their penises and engage in oral sex with them.
26. Each time, the priests would bring plaintiff back to the room he shared with his brother, console plaintiff while he cried and then return to take him back to the shower room to further sexually abuse him.
27. Upon information and belief, the priest that was in charge came into plaintiffs room to console him and told him he was okay and that he had to do it and keep it a secret before he was taken back into the shower room to be further sexually abused.
28. As such, Plaintiff suffered catastrophic and lifelong injuries as a result of defendants **DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI HIGH SCHOOL, ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**, and/or **OUR LADY OF THE ANGELS PROVINCE**'s negligence in undertaking a duty, including but not limited to in locis parentis, in failing to protect the children of its parishes and of its community safe from Smyka, Brzezniak and Mendola despite the Diocese, St. Francis, Order and/or Our Lady of the Angels Province having knowledge that Smyka, Brzezniak abused and/or sexually abused children and/or had the propensity to abuse and/or sexually abuse children, and/or allowing Smyka, Brzezniak and Mendola to continue to have their positions of authority and power, with unfettered access to children, as well as the diocese failed to adequately supervise Smyka, Brzezniak and Mendola.

AS FOR A FIRST CAUSE OF ACTION FOR NEGLIGENCE

AS FOR THE DIOCESE OF BUFFALO

29. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 28., inclusive, with the same force and effect as if hereinafter set forth at length.
30. At all times mentioned herein, defendant **DIOCESE OF BUFFALO** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons and children of its parishes, including Plaintiff, safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Defendant **JAMES SMYKA**, Brzezniak and Mendola.
31. At all times mentioned herein, defendant **DIOCESE OF BUFFALO** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.
32. As a result of the negligence of defendant **DIOCESE OF BUFFALO** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
33. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
34. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
35. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
36. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENCE

AS FOR ST. FRANCIS OF ASSISI HIGH SCHOOL

37. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 36., inclusive, with the same force and effect as if hereinafter set forth at length.
38. At all times mentioned herein, defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons and children of its parishes, including Plaintiff, safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Defendant **JAMES SMYKA**, Brzezniak and Mendola.
39. At all times mentioned herein, defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.
40. As a result of the negligence of defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
41. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
42. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.

43. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
44. This action falls within exceptions to Article 16 of the C.P.L.R.

AS FOR A THIRD CAUSE OF ACTION FOR NEGLIGENCE

AS FOR THE ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS

MINOR CONVENTUAL

45. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. Through 44., inclusive, with the same force and effect as if hereinafter set forth at length.
46. At all times mentioned herein, defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons and children of its parishes, including Plaintiff, safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Defendant **JAMES SMYKA**, Brzezniak and Mendola.
47. At all times mentioned herein, defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.
48. As a result of the negligence of defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress,

mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.

49. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
50. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
51. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
52. This action falls within exceptions to Article 16 of the C.P.L.R.

AS FOR A FIFTH CAUSE OF ACTION FOR NEGLIGENCE

AS FOR THE OUR LADY OF THE ANGELS PROVINCE

53. Plaintiffs repeat, reiterate and reallege each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 52., inclusive, with the same force and effect as if hereinafter set forth at length.
54. At all times mentioned herein, defendant **OUR LADY OF THE ANGELS PROVINCE** owed a duty of care, including but not limited to in locis parentis, to keep the young patrons and children of its parishes, including Plaintiff, safe from the abuse and/or sexual abuse by its agents, servants and or employees under its supervision and control, including on company premises, that ultimately befell the plaintiff, and they had a duty to supervise Defendant **JAMES SMYKA**, Brzezniak and Mendola.
55. At all times mentioned herein, defendant **OUR LADY OF THE ANGELS PROVINCE** and/or its agents, servants and/or employees breached the above-stated duty in a negligent, reckless, willful and wanton manner, and caused Plaintiff to be sexually assaulted.

56. As a result of the negligence of defendant **OUR LADY OF THE ANGELS PROVINCE** and/or its agents, servants and/or employees, plaintiff was caused serious personal injuries, emotional distress, mental pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
57. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
58. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
59. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
60. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A SIXTH CAUSE OF ACTION FOR NEGLIGENT HIRING,
RETENTION AND SUPERVISION AS TO DIOCESE OF BUFFALO**

61. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 60., inclusive, with the same force and effect as if hereinafter set forth at length.
62. Defendant **DIOCESE OF BUFFALO** had a duty to supervise and prevent known risks of harm to the children and students of its parishes by its agents, servants and/or employees.
63. Defendant was negligent in hiring, retaining and supervising their personnel, such as Defendant **JAMES SMYKA**, Brzezniak and Mendola, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who

should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its parishes.

64. Defendant **DIOCESE OF BUFFALO** knew or should have known Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
65. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
66. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
67. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
68. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
69. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A SEVENTH CAUSE OF ACTION FOR NEGLIGENT HIRING,
RETENTION AND SUPERVISION AS TO ST. FRANCIS OF ASSISI HIGH SCHOOL**

70. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 69., inclusive, with the same force and effect as if hereinafter set forth at length.
71. Defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** had a duty to supervise and prevent known risks of harm to the children of its parishes by its agents, servants and/or employees.

72. Defendant was negligent in hiring, retaining and supervising their personnel, such as Defendant **JAMES SMYKA**, Brzezniak and Mendola, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its church.
73. Defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** knew or should have known Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
74. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
75. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
76. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
77. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
78. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR AN EIGHTH CAUSE OF ACTION FOR NEGLIGENT HIRING,
RETENTION AND SUPERVISION AS TO ST. ANTHONY OF PADUA PROVINCE
OF THE ORDER OF FRIARS MINOR CONVENTUAL**

79. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 78., inclusive, with the same force and effect as if hereinafter set forth at length.
80. Defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** had a duty to supervise and prevent known risks of harm to the children and students of its parishes by its agents, servants and/or employees.
81. Defendant was negligent in hiring, retaining and supervising their personnel, such as Defendant **JAMES SMYKA**, Brzezniak and Mendola, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its parishes.
82. Defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** knew or should have known Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.
83. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
84. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.

85. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
86. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
87. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR A NINTH CAUSE OF ACTION FOR NEGLIGENT HIRING,
RETENTION AND SUPERVISION AS TO OUR LADY OF THE ANGELS
PROVINCE**

88. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 87., inclusive, with the same force and effect as if hereinafter set forth at length.
89. Defendant **OUR LADY OF THE ANGELS PROVINCE** had a duty to supervise and prevent known risks of harm to the children and students of its parishes by its agents, servants and/or employees.
90. Defendant was negligent in hiring, retaining and supervising their personnel, such as Defendant **JAMES SMYKA**, Brzezniak and Mendola, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of church officials and other church supervisors who should have properly been supervising the agents, servants and/or employees and church officials to ensure the safety of the children of its parishes.
91. Defendant **OUR LADY OF THE ANGELS PROVINCE** knew or should have known Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.

92. As a result of such negligent hiring, supervising and retention, Plaintiff was caused to suffer serious personal injuries, emotional distress, conscious pain and suffering, mental anguish and/or physical manifestations thereof, and other losses, all of which have not as of yet been ascertained.
93. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
94. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
95. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
96. This action falls within exceptions to Article 16 of the C.P.L.R.

AS AND FOR THE TENTH CAUSE OF ACTION FOR NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS AS TO DIOCESE OF BUFFALO

97. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 96., inclusive, with the same force and effect as if herein set forth at length.
98. Defendant **DIOCESE OF BUFFALO** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Defendant **JAMES SMYKA**, Brzezniak and Mendola, the agents, servants and/or employees who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.
99. Defendant **DIOCESE OF BUFFALO** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.

100. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Defendant **JAMES SMYKA**, Brzezniak and Mendola.
101. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abusing Plaintiff.
102. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
103. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
104. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
105. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR THE ELEVENTH CAUSE OF ACTION FOR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS AS TO ST. FRANCIS OF ASSISI HIGH
SCHOOL**

106. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 105., inclusive, with the same force and effect as if herein set forth at length.
107. Defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Defendant **JAMES SMYKA**, Brzezniak and Mendola, the agents, servants and/or employees who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.

108. Defendant **ST. FRANCIS OF ASSISI HIGH SCHOOL** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
109. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Defendant **JAMES SMYKA**, Brzezniak and Mendola.
110. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abusing Plaintiff.
111. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
112. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
113. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
114. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR THE TWELFTH CAUSE OF ACTION FOR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS AS TO ST. ANTHONY OF PADUA
PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL**

115. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 114., inclusive, with the same force and effect as if herein set forth at length.

116. Defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Defendant **JAMES SMYKA**, Brzezniak and Mendola, the agents, servants and/or employees who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.
117. Defendant **ST. ANTHONY OF PADUA PROVINCE OF THE ORDER OF FRIARS MINOR CONVENTUAL** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
118. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Defendant **JAMES SMYKA**, Brzezniak and Mendola.
119. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abusing Plaintiff.
120. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.
121. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
122. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
123. This action falls within exceptions to Article 16 of the C.P.L.R.

**AS AND FOR THE THIRTEENTH CAUSE OF ACTION FOR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS AS TO OUR LADY OF THE ANGELS
PROVINCE**

124. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 123., inclusive, with the same force and effect as if herein set forth at length.
125. Defendant **OUR LADY OF THE ANGELS PROVINCE** and their agents, servants and/or employees, knew or reasonably should have known that the failure to properly advise, supervise and hire Defendant **JAMES SMYKA**, Brzezniak and Mendola, the agents, servants and/or employees who sexually abused Plaintiff, would and did proximately result in physical and emotional distress to Plaintiff.
126. Defendant **OUR LADY OF THE ANGELS PROVINCE** and their agents, servants and/or employees knew or reasonably should have known that the sexual abuse and other improper conduct would and did proximately result in physical and emotional distress to Plaintiff.
127. Defendant has the power, ability, authority and duty to intervene with and/or stop the improper conduct that resulted in Plaintiff being sexually abused by Defendant **JAMES SMYKA**, Brzezniak and Mendola.
128. Despite said knowledge, power and duty, defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that resulted in Defendant **JAMES SMYKA**, Brzezniak and Mendola sexually abusing Plaintiff.
129. By reason of the foregoing, Plaintiff is entitled to compensatory damages from defendants in such sums as a jury would find fair, just and adequate.

130. By reason of the foregoing, Plaintiff is entitled to punitive damages from defendants in such sums as a jury would find fair, just and adequate.
131. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.
132. This action falls within exceptions to Article 16 of the C.P.L.R.

AS FOR A FOURTEENTH CAUSE OF ACTION FOR INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS
AS TO JAMES SMYKA

133. Plaintiff repeats reiterates, and reallages each and every allegation contained in those paragraphs of the Complaint marked and designated 1. through 132., inclusive, with the same force and effect as if hereafter set forth at length.
134. Defendant **JAMES SMYKA** engaged in outrageous conduct towards plaintiff, with the intention to cause, or with reckless disregard for the probability of causing, plaintiff to suffer severe emotional distress by sexually assaulting her at the age of eleven at school.
135. As a proximate result of the aforementioned assaults, batteries, and other violations committed against Plaintiff, she has suffered and continues to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses, all her damage in amounts to be proven at trial.
136. Defendant **JAMES SMYKA** committed the acts alleged herein maliciously, fraudulently, and oppressively with the wrongful intention of injuring plaintiff **JANE DOE**, from an improper and evil motive amounting to malice and in conscious disregard of plaintiff's rights, entitling plaintiff to recover punitive damages in amounts to be proven at trial.

137. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

138. This action falls within the exceptions to Article 16 of the C.P.L.R.

AND AS FOR THE FIFTEENTH CAUSE OF ACTION FOR ASSAULT

AS TO JAMES SMYKA

139. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 138., inclusive, with the same force and effect as if herein set forth at length.

140. Defendant **JAMES SMYKA's** predatory, abusive, manipulative and unlawful acts against Ms. Doe, created a reasonable apprehension in Ms. Doe of immediate harmful or offensive contact to plaintiff's person, all of which were done intentionally by defendant **JAMES SMYKA** to plaintiff without plaintiff's consent.

141. As a direct and proximate result of the aforementioned assault, Plaintiff has sustained in the past, and will continue to sustain in the future, serious and severe psychological injuries and emotional distress, mental anguish, embarrassment and humiliation.

142. As a direct and proximate result of the aforementioned assaults, plaintiff has incurred medical expenses and other economic damages, and will now be obligated to expend sums of money for medical care and attention in effort to cure herself of her injuries and to alleviate her pain and suffering, emotional distress, mental anguish, embarrassment and humiliation.

143. By reason of the foregoing, plaintiff **JANE DOE** is entitled to compensatory damages from defendant **JAMES SMYKA** in such sums a jury would find fair, just and adequate, and the plaintiff, Ms. Doe, is further entitled to punitive and exemplary

damages from defendant **JAMES SMYKA** in such sums as a jury would find fair, just and appropriate to deter said defendant and others from future similar misconduct.

144. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

145. This action falls within exceptions to Article 16 of the C.P.L.R.

AND AS FOR THE SIXTEENTH CAUSE OF ACTION FOR BATTERY

AS TO MICHAEL JAMES SMYKA

146. Plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this Complaint marked and designated 1. through 145., inclusive, with the same force and effect as if herein set forth at length.

147. When Ms. Doe was approximately 9 years old, defendant **JAMES SMYKA** confined Ms. Doe to a classroom and unlawfully sexually abused her by digitally penetrating Ms. Doe.

148. Defendant **JAMES SMYKA's** unlawful, abusive, manipulative, and predatory acts against Ms. Doe, amounted to a series of harmful and offensive contacts to plaintiff's person all of which were done intentionally by defendant to plaintiff without plaintiff's consent.

149. As a direct and proximate result of the aforementioned batteries, Plaintiff has sustained in the past, and will continue to sustain in the future, psychological injury, pain and suffering, serious and severe psychological and emotional distress, mental anguish, embarrassment and humiliation.

150. By reason of the foregoing, plaintiff **JANE DOE** is entitled to compensatory damages from defendant **JAMES SMYKA** in such sums a jury would find fair, just and adequate, and the plaintiff, Ms. Doe, is further entitled to punitive and exemplary

damages from defendant **JAMES SMYKA** in such sums as a jury would find fair, just and appropriate to deter said defendant and others from future similar misconduct.

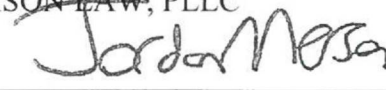
151. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

152. This action falls within exceptions to Article 16 of the C.P.L.R.

WHEREFORE, plaintiff demands judgement against defendants in such sum as a jury would find fair, adequate and just.

Dated: New York, New York
August 14, 2019

MERSON LAW, PLLC

By: 

Jordan K. Merson
Attorney for Plaintiff
150 East 58th Street 34th Floor
New York, New York 10155
(212) 603-9100

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index No.:

_____/19

-----X

JOHN DOE,

Plaintiff,

-against -

ATTORNEY
VERIFICATION

DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI
HIGH SCHOOL, ST. ANTHONY OF PADUA
PROVINCE OF THE ORDER OF FRIARS MINOR
CONVENTUAL, OUR LADY OF THE ANGELS
PROVINCE and JAMES SMYKA,

Defendants.

-----X

JORDAN K. MERSON, an attorney duly admitted to practice in the Courts of New York
State, and a member of the firm MERSON LAW, PLLC., attorneys for the plaintiffs in
the within action, hereby affirms under penalty of perjury:

That he has read the within complaint and knows the contents thereof, and that the
same is true to his own knowledge, except as to the matters therein stated to be alleged upon
information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigations and records in
the file.

That the reason this verification is made by affirmant and not by the plaintiff is that
the plaintiff is not within the County where the attorney has his office.

Dated: New York, New York
August 14, 2019



JORDAN K. MERSON

Index No.

Year 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JOHN DOE,

Plaintiff,

-against -

DIOCESE OF BUFFALO, ST. FRANCIS OF ASSISI HIGH
SCHOOL, ST. ANTHONY OF PADUA PROVINCE OF THE
ORDER OF FRIARS MINOR CONVENTUAL, OUR LADY
OF THE ANGELS PROVINCE and JAMES SMYKA,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

Merson Law, PLLC.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone

150 East 58th Street 34th Fl.
New York, New York 10155
(212) 603-9100

To: All Parties
